IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4702 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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RAJKOT VOLUNTARY BLOOD BANK & RESEARCH CENTRE

Versus

GAUTAM ICHHASHANKER DAVE

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Appearance:

MR PM THAKKAR for Petitioner

MR DG CHAUHAN for Respondent No. 1

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CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 15/02/2000

ORAL JUDGEMENT

1. This is a petition under Article 227 of the Constitution wherein the petitioner challenges the judgement and award of the Labour Court in Reference [LCR] No.1219/85, which directed the reinstatement of the respondent - workman with full backwages [after deducting the amount earned by the workman during the pendency of

the Reference].

2. Before discussing the merits of the present petition, it is desirable to bear in mind the principles laid down by the Supreme Court in the context of the scope and ambit, and the powers and limitations of the High Court, while exercising jurisdiction under Article 227 of the Constitution of India. The Supreme Court, in the case of Mohmmad Yunus v/s Mohammad Mustaqim [AIR 1984 SC 38] and Khali Ahmed Bashir v/s Tufelhussein S. Sarangpurwala [AIR 1988 SC 184], has held that the High Court, while examining a petition under Article 227 of the Constitution of India, cannot reappreciate the evidence and cannot disturb the findings of fact recorded by the courts below except where the same are perverse, and even errors of law cannot be corrected.

3. There is no dispute that the respondent - workman was engaged by the petitioner as a Public Relations Officer, that he was engaged on a consolidated salary of Rs.500/- per month, and that he had been in regular employment in this post for three years when his services were terminated.

Being aggrieved by such termination, the workman had filed the aforesaid reference, which as aforesaid, was allowed.

4. First of all, it would appear from the record of the case that no documentary evidence has been led by the present petitioner - employer. So far as the factual data is concerned, the petitioner's case would rest upon the oral evidence led on its behalf by its Medical Director [exh.22], which is discussed in para 5 of the impugned award.

As per his deposition, the workman was serving as an Assistant Public Relations Officer in the institution, which is popularly known as a Blood Bank, that this institution used to obtain blood from donors, used to analyze the same and then to supply the said blood to needy patients. No payment was made for the blood obtained from donors, and that the institution did not charge anything from the patients who were supplied with blood by them, except processing and material charges. It is then admitted that formerly such processing and material charges used to be Rs.30/- per unit, but thereafter they have been progressively increased, until on the date of deposition, they were Rs.90/- per unit.

Apart from this assertion, there is no factual

data upon which the nature and character of the employer can be established, in the context of the controversy raised before the Labour Court and argued before me.

5. The bone of contention between the parties appears to be that the petitioner being a voluntary blood bank, is not "an industry" within the meaning of section 2[j] of the Industrial Disputes Act.

In this context, learned counsel for the petitioner sought to rely upon a decision of the Supreme Court in the case of Physical Research Laboratory v/s K.G.Sharma [AIR 1997 SC 1855]. There is no doubt that this decision, after considering the various relevant factors, and in my opinion mainly factual factors, came to the conclusion that the Physical Research Laboratory [PRL] was not "an industry" within the meaning of section 2[j] of the said Act.

The major portion of the said decision deals with the factual aspects of the nature and character of the activity of PRL, the constitution of PRL, its relationship with the Government, the nature and character of its product viz. scientific information etc.

6. While dealing with the subject before it, the Supreme Court has referred to its earlier decision in the case of Bangalore Water Supply and Sewerage Board v/s A. Rajappa [ AIR 1978 SC 548 ]. Having considered the various aspects taken into consideration by the Bangalore Water Supply case [supra], the Supreme Court observed [in the case of PRL (supra)] that the aforesaid decision [in the case of Bangalore Water Supply] does not lay down exhaustive tests, but those tests laid down are merely in the nature of guidelines, and, other tests may be equally relevant. Further more, it requires to be noted that one of the prime reasons for holding that PRL is not "an industry" within the meaning of I.D. Act, is based upon the earlier conclusion drawn in the Bangalore Water Supply case to the effect that an activity being undertaken by the Government cannot be regarded as "an industry", if it is done in the discharge of its sovereign functions.

Thus, no matter how we read the ratio or the principles laid down in the case of PRL, in no manner can it be positively said that the three tests which are generally described as dominant nature tests, are redundant, inapplicable, or that the application thereof to the facts of the case can be avoided or eliminated.

The three tests are listed in para 143 of the judgement in Bangalore Water Supply case [supra]. Clause [b] deals with sovereign functions, and strictly understood, they [alone] qualify for exemption, not the welfare activities or economic adventures undertaken by government or statutory bodies.

Thus, when the test laid down in clause [a] of the said para 143 is applied to the facts of the case, it will be found that once there is a relationship of employer and employee, and the activity carried on by the employer is for the purpose of supplying, through an organized activity, provision for goods or services to society, the mere fact that such activities are carried on with a nonprofit motive will not take such an institution outside the purview of the definition [even assuming that such has been established by appropriate evidence on the facts of the present case.].

Learned counsel for the petitioner then sought to rely upon observations made by the Supreme Court in sub-para [c] of para 142 in the Bangalore Water Supply case [supra]. The said sub-para [c] reads as under :-

> "[c] If, in a pious or altruistic mission many employ themselves, free or for small honoraria or like return, mainly drawn by sharing in the purpose or cause, such as lawyers volunteering to run a free legal service, clinic or doctors serving in their spare hours in a free medical centre or ashramites working at the bidding of the holiness, divinity or like central personality, and the services are supplied free or at nominal cost and those who serve are not engaged for remuneration or on the basis of master and servant relationship, then, the institution is not an industry even if stray servants, manual or technical, are hired. Such eleemosynary or like undertakings alone are exempt - not other generosity, compassion, development passion or project."

However, what cannot be overlooked is a qualifying clause which operates as an exception to the general exemption carved out in sub-para [c]. In order that the pious or altruistic mission be excluded from the definition of "an industry", the tests are contemplated and laid down in the said sub-para [c] as a whole. However, the qualifying clause clearly makes it clear

that, "those who serve are not engaged for remuneration or on the basis of a master and servant relationship". On the facts of the case, there is no dispute that the respondent workman was in fact engaged on a consolidated salary of Rs.500/- per month, that he had served for three years in that capacity on the post of Public Relations Officer, and that therefore there was a relationship of master and servant. Thus, this by itself would not take the institution out of the definition of "an industry".

The further contention of the learned counsel for the petitioner that the activities of the petitioner are not of a commercial nature and/or that it is not engaged in any activity akin to a business activity, does not make any difference to the fundamentals already considered and discussed hereinabove. The fact that the institution is a non-profit institution presupposes that it is not engaged in any commercial or business activity. Even otherwise, this is a mixed question of fact and law, and in the absence of any specific evidence on this narrow issue, it would not be open to this Court while exercising jurisdiction under Article 227 of the Constitution to arrive at a specific finding of fact that the activity of the petitioner is a non-commercial activity and/or the activity is of a nature which cannot be said to be akin to the business activity. However, as aforesaid, the tests laid down by the Supreme Court in the Bangalore Water Supply case [supra] would not, merely on account of this factor, remove such an employer from the definition of "an industry", since otherwise it is covered.

7. In the premises aforesaid, I am satisfied that the conclusion arrived at by the Labour Court to the effect that the petitioner institution is "an industry' within the meaning of section 2[j] of the I.D. Act, is a conclusion justified on the facts apparent on the face of the record, and the same does not require any interference in the present petition under Article 227 of the Constitution.

8. There is therefore no substance in the present petition and the same is therefore dismissed. Rule is discharged with no orders as to costs. Ad interim relief stands vacated.

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